

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CLERK'S MINUTES

Before the Honorable Lorenzo F. Garcia

Case No.: 69cv7941

Date: February 11-12, 2013

Title: *State of New Mexico v. Aragon*

Courtroom Clerks: Jeff Minier

Court Reporters:

Julie Goehl (Feb. 11, 2013)

Danna Schutte-Everett (Feb. 12, 2013)

Court in Session:

Court in Recess:

Time:

Feb. 11, 2013:	8:58 a.m.	11:08 a.m.	2 hours 10 minutes
	11:20 a.m.	11:56 a.m.	36 minutes
	1:14 p.m.	2:50 p.m.	1 hour 36 minutes
	3:10 p.m.	4:55 p.m.	1 hour 45 minutes

Feb. 12, 2013:	9:03 a.m.	9:41 a.m.	38 minutes
	10:01 a.m.	10:16 a.m.	<u>15 minutes</u>

Total Time: 7 hours.

Type of Proceeding: Bench Trial

Attorneys Present for Plaintiff:

Attorneys Present for Defendants:

Ed Newville, State of New Mexico
Dr. John Baxter, State's Expert
Arianne Singer, State of New Mexico

David Ortiz, *pro se*, with Cecilia Ortiz
Eloy Garcia, Mayordomo of Acequia de Chamita

Proceedings:

Monday, February 11, 2013

8:58 Court in Session:

Court sets the stage for today's hearing and summarizes the procedural background.

Ed Newville enters his appearance.

David Ortiz enters his appearance.

The Court states it has entered an order establishing procedures for this case and a

memorandum opinion and order granting Plaintiff's motion in limine.

9:01 Mr. Newville gives opening statement. The State offered priority date of 1600 which was rejected by Mr. Ortiz. Ortiz has burden of proving an earlier date of 1598. The State will offer evidence that colonists in 1598 did not settle on west bank, but instead settled on east side of Rio Grande. The colonists relocated to west side between 1599 and 1600. Work on the acequia in 1598 was on east side of Rio Grande.

9:05 Mr. Ortiz gives opening statement. He claims August 11, 1598 as the priority date for Acequia de Chamita and objects to the State's offer of 1600. No other acequia gives day, month, and year of establishment date. He questions whether there are historical facts demonstrating that the 1598 acequia was on east side of Rio Grande.

Ortiz makes statement in Spanish. Court advises Ortiz that Court record must be in English and, therefore, he cannot speak Spanish, and must provide interpreter, or present statement in English.

9:09 Ortiz contends that the Special Master entered erroneous recommendation. He also states that some of the parcientes were not part of hearing before Special Master. Ortiz states that common knowledge is that Chamita is 1598.

9:11 Court: Burden of proof is on Ortiz to prove earlier date

9:12 Defense calls David Ortiz, witness sworn.

Defense Ex. A offered, Ortiz reads from pages 623, 624 625, 628, 629, 630, 632, 633, 634, 638, 639, 641, 642, 643-645, 651-4, 658 from an account of a soldier that accompanied Onate.

Ortiz references Newville's proposed findings. Newville objects to Ortiz's testimony, testifying to facts not in evidence. Objection sustained.

Ortiz reads from Ex. A, pages 660-1, 666-7.

Ortiz offers Ex. B, reads from 672-4,
Ortiz stops reading, gives his opinion regarding Spaniards afraid of Indian attack.
Newville objects, sustained.

Ortiz continues reading from Ex. B, pages 674, 677, 679, 682.

Ortiz reads from Ex. C, pages 701-02, 704, 706-8, 710-11, 714-16, 718- 20, 722, 723, 726, 727, 729, 730.

9:59 Court asks Ortiz why documents after 1600 about crops and animals are relevant to 1598 date. Ortiz states the witnesses say their best harvest in last three years 1601, 1600, 1599.

Court instructs Ortiz to proceed but to keep statements relevant to 1598 priority date.

Ortiz continues reading from Ex. C, p. 704, explains that 3 years reference in a report made in 1601 relates back to 1598. Newville objects: witness is giving opinion testimony. Objection sustained. Court reads from its Order re: the State's motion in limine that lay witnesses cannot give opinion testimony. Court instructs Ortiz to refrain from opinion testimony.

Ortiz reads from Ex. C, pages 733, 735, 736, 737, 738.

Ortiz reads from Ex. E (skipped Ex. D), pages 585, 586.

Ortiz reads from Ex. F, page 68.

Ortiz reads from Ex. G, page 70.

Ortiz reads from Ex. H, page 142.

Court asks why Ex. H relevant, because it doesn't indicate where crops were grown and doesn't tie the crops mentioned to the location of Chamita.

10:15 Ortiz reads from Ex. J, page 481.

Ortiz reads from Ex. K, pages 320, 321, and points out that Ex. K says "Valle de San Juan," not "San Juan Pueblo."

Court corrects Ortiz, 320 refers to "San Juan Pueblo."

Ortiz reads from Ex. K, page 322, "went to San Juan," Ortiz: "does not say 'Pueblo'"

Ortiz reads from Ex. K, page 323, and begins to clarify text. Newville objects.

Objection, sustained.

Ortiz reads from Ex. K, page 324.

Court asks why Ortiz is using this exhibit. How does reference to Saint John the Baptist relate to commencement of irrigation ditch in San Gabriel? The document appears to refer to the church at San Juan, not San Gabriel.

Ortiz contends the document shows the ditch was at San Gabriel, not San Juan.

Ortiz reads from Ex. K, page 324.

Ortiz reads from Ex. L, pages 342, 346, and states San Gabriel existed in 1598.

10:32 Ortiz reads from Ex. M, page 1130. Ortiz states he could not find a date for the document but thought it was 1599.

Court strikes opinion testimony re: 1599 date because not part of Ex. M.

Ortiz reads from Ex. N, page 584.

Ortiz reads from Ex. O, page 514. He states it is a multiple page exhibit, but he did not submit the entire document.

Ortiz attempts to characterize exhibit.

Newville objects. Objection sustained.

Ortiz reads from Ex. O, page 528, list of clothing. Ortiz: "no food listed"

Ortiz reads from Ex. O, page 529, "one bag of raisins and almonds."

Ortiz reads from Ex. O, page 530. Ortiz: "I don't see any food in there"

Ortiz reads from Ex. P, page 688.

Ortiz reads from Ex. Q, pages 619-20.

Ortiz reads from Ex. R, pages 608-9.

Ortiz states he is not here to defend Onate, just to show irrigating and harvesting.

Ortiz reads from Ex. S, pages 837-838, 39, 850-51.

Ortiz: "it says San Juan, not San Juan Pueblo"

Ortiz reads from Ex. S, pages 861, 863. Ortiz notes that it "doesn't say 'Pueblo.'"

Court advises Ortiz "this is not the time to make arguments, please present your evidence."

Ortiz reads from Ex. S, pages 870, 878, 879, 883.

Ortiz reads from Ex. U, page 430. Ortiz: "seems to be contradiction"

Court asks: is this your opinion?

Ortiz refers to Ex. C, states: Marquez prepared questions, had been here three years.

Ortiz reads from Ex. V 455, first page read is un-numbered, 683, 684.

Ortiz reads from Ex. W 425, un-numbered page begins "has to see them to believe it", 427.

Court doesn't see relevance, instructs Ortiz to limit exhibits/references to evidence relevant to his burden of proof.

11:08 Court in recess for 10 minutes.

11:20 Court in session.

Ortiz reads from Ex. W. Ortiz at 427 and states that there is a contradiction regarding documents being signed at Pueblo of San Juan in 1599.

Newville objects stating there is no indication when the document was prepared.

The Court sustained the objection and advised Ortiz that there is no dispute when pueblos existed, what is in dispute is when irrigation began. The Court instructed Ortiz to focus on evidence relevant to location, construction, and use of the ditch.

Ortiz requests to use State's Ex. 12,

Court: no objection to exhibit so Court allows Ortiz to use.

The court notes that there is no reference to San Gabriel in Ex. K.

Ortiz reads from Ex. 12, in Spanish. Court advises Ortiz that he cannot read Spanish into the record and has the responsibility to provide federally certified interpreter if he wants to introduce evidence in Spanish.

Ortiz: "this [Ex. 12] is the meat of it." "I might as well go home."

Court: Do you have any other evidence, including a translation that was not objected to?

Ortiz: Yes, Ex. NN is a translation.

Ortiz reads from Ex. NN.

Ortiz directs the Court to Ex. TT.

Court: this is a pleading in this case, not a historical document. It cannot be accepted as an undisputed fact. The Court will reject Ex. TT.

Court: Do you have any other evidence?

Ortiz: No.

Court: Do you now move the exhibits into evidence?

Ortiz: Yes.

Newville: No objections.

The Court admits all exhibits tendered except for TT. Exhibits not referred to are not admitted.

11:47 Newville states he will not cross-examine Ortiz.

State calls Dr. John O. Baxter, witness sworn.

Court asks Newville to elicit Baxter's qualifications as an expert.

History major at Princeton.

Consulting service 30 years, water rights

Published a book via UNM Press "Dividing NM's Waters," regarding the colonial period to statehood

Testified as an expert for Zuni, SLC, Aamodt, Taos, Santa Cruz, Rio Gallina cases.

Court appointed expert, similar work for lower Rio Chama

Baxter states he was asked to examine all records re: original settlement at San Juan, where acequia located. The materials he reviewed included secondary sources (work by other historians) and the primary documents which were referenced in the secondary sources.

Newville asks the Court to qualify as Baxter as an expert.

Court: Are these types of docs used by experts in field? Baxter: Yes.

Court: Mr. Ortiz, any objections? Ortiz: No.

Court accepts the tender of Baxter and certifies him as an expert witness .

11:56 Court in recess.

1:14 Court in session.

Direct examination of Dr. Baxter by Mr. Newville.

Baxter: Primary sources are created at time of events under consideration. Secondary sources are those produced by people reviewing facts. Secondary sources are useful because they show where primary sources can be found. Primary sources are useful because they can show why there are differences of opinion as to what happened. The most important primary source is Hammond and Rey, a translation of collection of documents located in archives in Sevilla.

Onate gave San Juan Pueblo and San Gabriel Pueblo their names. San Juan Pueblo was the first settlement of Spanish colony per Onate's itinerario. Other documents show Spanish colonists at San Juan Pueblo in 1599.

Baxter discusses Ex. 8, which is a copy of pages from the Itinerario. Numbers in the left hand margin represent days of the month. Numbers in the right hand margin represent the distance traveled in leagues. This is the first recorded use of “San Juan” Pueblo.

Baxter discusses Ex. 18, which is a printed transcription of Ex. 8 and was prepared by two scholars/editors, and is dated 1871. On p. 228, there is an error in the title: date is 1596, not 1526, the correct date appears in the text. There is an omission on page 262 for the 10th day of the month, which is important because on the 11th, they began digging the acequia for the City of our father of San Francisco.

Regarding Ex. 19, a Hammond and Rey translation, Baxter states he agrees with translation.

Baxter reads from Ex. 8, 4th page of exhibit, on the 11th, they began digging the acequia for city of our father of San Francisco. It is the first reference to “city.” In Spain, a city is most important in hierarchy of settlements: city, villa, pueblo. City is not used much because it is very large. There were no cities in New Mexico. Mexico City is an example of a city. Onate had grand designs, similar to Cortez and New Spain. Onate was a descendant of an important rich Basque family. 1592, Onate was named alcalde of San Luis Potosi. There is no reference in itinerario to San Gabriel. The itinerario ended in 1599, with no explanation. On the 18th of August 1598, the rest of the group caught up to Onate. See Ex. 19 at 323, 2d paragraph. On page 320 of Ex. 19, San Juan Bautista is the same place as San Juan Pueblo. Pueblo of San Juan was on the east bank of the Rio Grande. The city of our father of St. Francis refers to the capital Onate wanted to establish. The church was completed on Sept. 7 and was called San Juan Bautista. Later, another church, San Miguel, was built in San Gabriel. Florence Holley Ellis did archeological work at San Miguel and concluded that San Juan Bautista was rapidly constructed. There are no remains of San Juan Bautista and its location is unknown. Baxter does not know when San Miguel constructed.

Baxter states Ex. 6 is documentation of an assemblage re: vassals and christians at San Juan Bautista, and was prepared on Sept. 9th at San Juan Bautista. Notation in the left margin states the ceremony took place at the Pueblo of San Juan.

The Court makes reference to the itinerary in Ex. 8 and indicated that Ex. 19 is a translation of Ex. 8. Court: Is there a similar translation for Ex. 6? Baxter: Yes. Newville: Ex. 5.

Newville states that Ortiz objected to Ex. 6 as unreadable and asks Baxter if he can read Ex. 6. Baxter: Yes.

Baxter states Ex. 5 contains the first reference to San Gabriel. San Gabriel does not appear in any earlier documents. San Gabriel is on the west bank of the Rio Grande across from San Juan. Ex. 5 does not treat San Gabriel and San Juan as a single location. City of San Francisco seems to be located near San Juan. There are no other references to city of San Francisco, but there are some possible indirect references. In 601 a member of Onate’s expedition testified in Spain that Onate wanted to build major city but colonists refused.

Baxter discusses Ex. 21 at 643, 652, and states the governor wanted a town. Baxter believes the city of San Francisco was intended to be near San Juan on the east side of the Rio Grande because Onate wanted to avoid encroachment on Indian farmland, based on stipulations in his contract and in ordinances regarding colonization. Also there was a large area on the east side suitable for urban development whereas there were farmlands on the west side. The purpose of an acequia on east side for the new city was for irrigation but more importantly to serve the urban entity.

A 1959 declaration of water rights for the Alcalde ditch, claimed a priority of 1600-1650. Baxter discusses Ex. 31, 1st page, which indicates a priority date of 1600-50. The Court asks why it is significant that a declaration in 1959 states a 1600 priority? It's not the same type of historical document. Baxter: There is a historical tradition of tracing heritage back to ditch.

Baxter states Follett performed an inventory in 1896 of acequias for predecessor of Bureau of Reclamation to determine their impact on Elephant Butte Reservoir. Follett started at Chama and went from Embudo to San Juan. Follett lists the date of construction in his inventory as 1600 for Chamita and 1600 for the Alcalde ditch on the east side of the Rio Grande. Baxter discusses Ex. 30, part of follett's report which, on the last page gives the priority dates for Alcalde ditch as probably 1600, San Juan as pueblo very old., Chamita as probably 1600. The table lists two Chamita ditches, one on the west side of the Rio Grande as old, the second on the Chama as probably 1600. The second ditch is probably Acequia de Chamita.

Baxter states there were several documents prepared in the first few months of 1599. Onate planned to send a delegation to Mexico City with information to document what he had accomplished and to plead for more men and assistance. Scribes copied various reports to take, approximately 10-12 documents which were prepared in San Juan Bautista. The last document was prepared on February 28, 1599 in San Juan Bautista. There are no references to San Gabriel. The colony was located at San Gabriel when a relief expedition arrived on December 24, 1600.

Baxter states that Ex. 21, page 643, indicates Herrera arrived with relief at San Gabriel and that Herrera had no experience of San Juan.

Baxter states that Ex. 24, contains statements from summer of 1601 which indicate Onate led an expedition onto the plains of Kansas and when he returned in November he discovered many colonists had left New Mexico. Onate sent his nephew Valdivar to overtake colonists, but was not successful. Valdivar took a letter from Onate to the authorities in New Spain, stating that if the King provided 300 soldiers, Onate would put up 100 soldiers. Valdivar took two sets of documents to promote his own career which included a questionnaire. One set of documents is dated at San Gabriel in July 1600 which were presented to the authorities in Mexico and were the first documents to refer to San Gabriel. There are no documents after February 1599 that reference being prepared at San Juan. Baxter believes Onate moved the headquarters of the colony and the entire colony to west side of river. The

city of San Francisco was never realized so Onate occupied San Gabriel because conditions were deteriorating.

2:50 Court in recess.

3:10 Court in session.

Regarding Ex. 4, Baxter states he is generally in agreement with Bancroft's work which mentions San Gabriel but doesn't mention where it is.

Regarding Ex. 9, Baxter states Bandelier is not convincing re: location of church in San Gabriel and he ignored information regarding San Juan.

Baxter discusses Ex. 10, at 932.

Baxter discusses Ex. 11 at 851, 863.

Torquemada is not a primary source and it's hard to say what his sources are, published in 1615.

Twitchell was a Santa Fe attorney, not a professional historian, published 2 vol. incl. Onate account. Ex. 13, published in 1911, accepted Bandelier's interpretation completely.

Ex. 14, by Read, an attorney, and published in 1912, described Onate's first settlement, same as Bancroft, disputed Twitchell's account, but there are mistakes in Read's report. Read says rivers were Santa Cruz and Rio Grande.

Baxter states Herbert Bolton, was a professional historian, see Ex. 16 which was published in 1916. Bolton did not have all information we have today and encouraged a student (Hammond) to research documents in Spain. Hammond believed the colonists settled first at San Juan and then later move to San Gabriel, based on the Itinerary and the Act of Obedience.

Baxter states Mark Simmons, a NM historian, published a biography of Onate, Ex. 22, in 1991, and believed the colonist settled first at San Juan and then later moved to San Gabriel.

Baxter discusses Ex. 27 at 114.

Baxter states Myra Ellen Jenkins, a historian, see Ex. 25, believed Onate first settled at San Gabriel, but she depends on documents by Horta who came with relief expedition and Velasco. Baxter states Jenkins doesn't appear to have considered entire record.

Baxter opined that the most thoroughly researched account is by Hammond.

Baxter states Ellis performed an archeological dig in 1959-1962, see Ex. 32, and concluded the colonists settled at San Juan first then relocated to San Gabriel. There is an error in her article, she described San Gabriel and relied on a description in Villagra's poem but Villagra

left before the move to San Gabriel. Villagra was describing San Juan.

Baxter states Ex. 34 at 176, indicates Okeh (San Juan) is on the east bank, not west bank.

Baxter says that Ex. 1, March 2012, Baxter's report needs to be revised/corrected regarding the date on page 5 to read "1599 to July of 1600." (not late fall).

3:43 State moves for admission of all exhibits 1-35.

Ortiz: No objections.

Court admits exhibits 1-35.

3:45 Cross examination of Dr. Baxter by Mr. Ortiz

Ortiz: Ex. 18 and 19, any mention of Rio Grande?

Baxter: Yes, in 18 earlier in document but not in exhibit portion.

Ortiz: Ex. 19, any mention of east bank of river?

Baxter: No.

Ortiz: in hist. docs, any mention of relocating headquarters to pueblo San Gabriel?

Baxter: No.

Ortiz: any reference in primary sources of acequia on west bank of Rio Grande irrigating in 1600?

Baxter: No.

Ortiz: Did the scholars all come to same conclusions?

Baxter: No.

Ortiz: Are the differing points of view still argued today?

Baxter: Yes.

Ortiz: anywhere in primary sources mention San Francisco was to be capital of new colony?

Baxter: No.

Ortiz: does Ex. 4 mention a move across the Rio Grande?

Baxter: I don't think so.

Ortiz: Are there any primary sources that state there was an acequia on the east side of the Rio Grande?

Baxter: No

Ortiz: Do you agree that the city of San Francisco was being built on Aug. 11, 1598?

Baxter: Yes.

Ortiz discusses Ex. 4 p. 133, reading note 13, in Spanish. Court reminds Ortiz of rule

regarding Spanish in record.

Ortiz: Was Chamita formerly known as SG?

Baxter: Yes, i think so.

Ortiz: Was the post established by Onate at San Gabriel a pueblo of Tewa indians?

Baxter: Yes.

Ortiz: Who were Torquemada's sources?

Baxter: I don't know.

Ortiz: could it be . . .

Newville: Objection.

Court: Sustained.. The witness said "I don't know" and cannot speculate.

Ortiz: Regarding Ex. 1 at 3, what were twitchell's flaws?

Baxter: Mistakes time to time.

Ortiz: Regarding Ex. 14, did Read have flaws?

Baxter: Sure.

Ortiz: Regarding Ex. 14 at 221, is the date Aug 11, 1599 a flaw?

Baxter: Very clearly.

Ortiz: Do you agree with Read, Ex 14 at 222, that San Gabriel was called San Francisco?

Baxter: Read was in error because Villagra never said that.

Ortiz: Was church built for Indians, either in San Gabriel or San Juan?

Baxter: It's hard to say; churches were built in both.

Ortiz: Regarding Ex. 119 at 223, do you believe that church was large enough for camp, included indians?

Baxter: Possibly as result of conversions.

Ortiz: Regarding Ex. 5 at 346, there were no Indians baptized as of Sept. 9, 1598?

Baxter: Probably true.

Ortiz: So the church was for the Spanish?

Newville: Objection, which church? How many Indians were baptized is outside the scope of Dr. Baxter's expertise.

Court: Sustained.

Ortiz: Regarding Ex. 19 320-24, any mention of east bank of Rio Grande?

Baxter: I don't think there is.

Ortiz: When did Hammond state they moved to San Gabriel?

Baxter: He's not specific.

Ortiz: In his introduction he said a few months?

Baxter: That's true.

Ortiz: Do you agree with Hammond a few months?

Baxter: Probably not.

Ortiz: Do you agree that on Sept 9, 1598 there was a San Gabriel?

Baxter: yes.

Ortiz: in your report regarding extorted food . . .?

Newville: Objection unclear.

Court: Restate the question.

Ortiz: If Spanish were extorting some of Pueblo's food, did they have some of their own?

Baxter: Probably, yes.

Ortiz: Did any exhibits support a 1600 date for Acequia de Chamita?

Baxter: No.

Ortiz: Official reports don't supply date for move across river?

Baxter: No.

Ortiz: official reports for east side, reports of arrival at San Juan?

Newville: Objection, question ambiguous.

Court: Did the Tewas have more than one pueblo?

Ortiz: Yes.

Baxter: Yes, Tewas had probably 10.

Court advises Ortiz to state question, no comment or argument at this stage of proceeding.

Ortiz: Ex. Z, n. 3 , no mention of move, true?

Baxter: Yes.

Ortiz: Ex. 26, do Velasco's remarks indicate San Juan and San Gabriel are two parts of the same Pueblo?

Baxter: Yes.

Ortiz: On Ex. 11 do they use "east bank of Rio Grande"?

Baxter: I don't think so.

Ortiz: On Ex. 1 at 6, does Hammond agree with relocation east to west in 1600?

Baxter: Yes.

Ortiz: On Ex. 30, you stated these are facts?

Baxter: I stated it was Follett's opinion.

Ortiz: Are there 1300 irrigated acres on Chamita?

Baxter: I don't know.

Ortiz: Follet's language regarding the acequias uses "probably, approximate etc." Did you check to see if that's where those acequias are?

Baxter: No.

Court: How much more time do you need?

Ortiz: I can quit now.

Court: I'm not pressuring you, just checking the schedule.

Ortiz: I'd like to ask more questions.

Court: How much more time do you need?

Ortiz: 1-2 more hours.

Newville: I will have a short redirect.

Court: Will you have closing statements?

Newville: I'm not sure.

Ortiz: Yes.

Court will reconvene at 9:00 a.m. and will terminate in the morning

4:55 Court in recess.

Tuesday, February 12, 2013

9:03 Court in session.

Cross-examination of Dr. Baxter by Mr. Ortiz.

Ortiz: If relocation in Spring 1599, why not first irrigation in 1599?

Baxter: I'm not sure.

Ortiz: Regarding Ex. 19 at 323, were all 1500 Indians from San Juan?

Baxter: I don't know.

Ortiz: Do you find it strange that the 1500 were called barbarian Indians, not San Juan Indians?

Baxter: I don't know why.

Ortiz: If the built acequia in August 1598, then there was no harvest until next year?

Baxter: Yes.

Ortiz offers Ex. II.

Newville: Objection, hearsay.

Court: Sustained.

Ortiz: Regarding Ex. 30, was Follett accurate in his tables of acequias?

Baxter: I'm sure he did best he could.

Ortiz: In Ex. 30 at 50, the irrigated acreage, ditch capacities, accurate?

Baxter: Yes.

Ortiz: Ages, plus or minus, correct?

Baxter: Yes.

Ortiz: Is Ex. 30 the document you and Stanley Hordes considered for the 1600 date?

Baxter: No.

Ortiz: had you seen Ex. 30 in 1996?

Baxter: No.

Ortiz: Why did Salazar ditch get 1600 v. 1800?

Newville: Objection outside scope. Relevance?

Court: Witness did not rely on Ex. 30, objection sustained.

Ortiz: Does Ex. X laws of indies 38, describe San Gabriel ?

Baxter: It sets standard, hard to say if colonist stayed with it.

Ortiz: Ex. X law 39, do you believe this was considered in colonists settlement?

Baxter: I don't know.

Ortiz: Ex. X law 32, does this describe two pueblos?

Baxter: Yes, I think so.

Ortiz: Ex. 15, line 20-37, if Indians had acequia on east side, wouldn't they have had water and not have to rely on rain?

Baxter: Possibly.

Ortiz: Ex. 31, no declarants claimed 1598 did they?

Baxter: No.

Ortiz: the pre-Spanish acequias are not Iberian style?

Baxter: I don't know.

Court asks Baxter to explain Iberian style.

Baxter: I'm not sure I can.

Ortiz: That's all the questions I have.

9;30 Redirect examination by Mr. Newville.

Newville: Who coined the term San Juan de los caballeros?

Baxter: Villagra, in his poem was the first time, never used by Onate.

Newville: Ex. 15at 3, lines 10-17, who were the caballeros?

Baxter: Spanish knights. It had nothing to do with Indians relinquishing their homes.

Newville: San Gabriel is Chamita?

Baxter: No, they are two separate locations, but close.

Ortiz: Ex. 28, paragraph d at 4?

Baxter revises his testimony regarding Hordes recommended 1600 for Chamita.

Newville: Did Simmons make any final conclusion on location of 1598 ditch?

Baxter: No.

Newville: How did Follett gather information regarding dates?

Baxter: From the local population.

Newville: Follett's report, is it regarded accurate?

Baxter: It has mistakes but is a pretty good report.

Newville: The Law of Indies, what was purpose?

Baxter: To establish guidelines for future explorations.

Newville: Was it designed to protect Indians?

Baxter: Yes.

Newville: Were the Spanish planning a site separate from pueblos?

Baxter: Yes, the city of San Francisco.

Newville: No further questions.

9:40 Court: Do you have any further evidence?

Newville: I do not.

Court: Mr. Ortiz, do you have any rebuttal evidence?

Ortiz: No.

9:41 Court in recess for 20 minutes.

10:01 Court in session.

Mr. Ortiz gives closing.

He has paid his own costs, not luxury of interpreters, experts, etc.

10:05 Mr. Newville gives closing.

There are only two2 factual matters:

where did Onate establish 1st colony;

where was ditch for city of San Francisco.

Numerous document indicate San Juan and San Gabriel are separate distinct places.

The information is limited to occupation which depended on agricultural and the State presumes irrigation shortly after occupation.

Only in 1600 is there reference to occupation of San Gabriel.

The location of 1598 acequia is uncertain, but clear that constructed when colonist occupied San Juan and was intended to serve city of San Francisco, distinct from San Juan and San Gabriel.

The move to San Gabriel is not described

We don't need to locate the ditch on the east side of the Rio Grande.
There is no evidence of connection between Chamita and 1598 ditch.
There is no evidence of irrigation on Ortiz property before 1600.

10:15 Ortiz rebuttal: "One sentence: Let the evidence speak."

Court addresses Mr. Ortiz stating he was the best, most well-prepared pro se litigant who's appeared in his court during the last 36 years.

Court will take this matter under advisement and will issue a decision promptly.

10:16 Court in recess.